

# N O T E S

## O N T H E

# H I S T O R Y

## O F T H E

### Life of King Henry the Second.

#### B O O K I.

P. 163. *S*HE reigned but a year, and Matthew of Westminster says,  
*She was expelled with disdain by the Nobles, who would not  
 fight under a woman.*

The words in the original are: "Anno Gratiae 672. rex occidentalium  
 " Saxonum Kiniwalcus, cum regnasset xxxi annis, defunctus est, et reg-  
 " navit pro eo uxor ejus Sexburga anno uno. Sed indignantibus regni mag-  
 " natibus expulsa est a regno, nolentibus sub sexu faemineo militare." The  
 last words declare the reason why the nobles disdained to submit to her  
 government, viz. because they would not *fight*, or *make war*, under a  
*woman*. And that Matthew of Westminster was not the inventor of this  
 story, but took it out of some Saxon chronicle, can hardly be doubted.  
 That published by Dr. Gibson (which is the only one we have) is more  
 short on this subject. "Hoc anno decessit Cenwallus rex, et Sexburga  
 " ejus uxor uno anno regnum tenuit post eum." These words do not inform  
 us how it happened that Sexburga reigned only one year; yet they rather  
 corroborate, than contradict Matthew of Westminster's account, as they  
 make no mention of her decease, or voluntary abdication. But William  
 of Malmfbury contradicts it. His words are these: "Kenwalchius post  
 " xxxi annos moriens, regni arbitrium uxori Sexburgæ delegandum pu-  
 " tavit; nec deerat mulieri spiritus ad obeunda regni munia: ipsa novos  
 " exercitus moliri, veteres tenere in officio; ipsa subjectos clementer mo-  
 " derari, hostibus minaciter infumere, prorsus omnia facere, ut nihil  
 " præter sexum discerneres: veruntamen plusquam animos faemineos  
 " anhelantem *vita destituit vix annua potestate perfunctam.*" From this  
 account one would conclude, that she lost her sovereignty only by a natu-

V. Chron.  
 Saxon. p. 41.

Malmfb. l. i.  
 f. 6



ral death. But this author may have avoided to publish a fact, which was so unfavourable to the cause of the empress Matilda, in a book which he dedicated to her brother, the earl of Gloucester. Whereas Matthew of Westminster, who published his history long after her death, when there was no question about a female succession, had no reasons to disguise the truth of this matter. I therefore have followed him, as a better authority than William of Malmesbury, with regard to this point; especially as his account appears more conformable to the character of the Saxons and spirit of the times. Sexburga probably was (as William of Malmesbury has described her) of a masculine character; on which account the king her husband might think her not unqualified to succeed to his crown, and might give her his nomination: but yet the nobles might disdain to submit to her government, and expel her from the throne. Be this fact as it may, the precedent of a woman governing only one year, in one kingdom of the heptarchy, was not enough to establish a right of female succession in the whole realm of England. Not long after her decease, Brithick, king of Wessex, having been poisoned by his wife, the West-Saxons made a law, to prohibit the wives of all their future kings from taking the title of queen, or sitting on thrones with their husbands. It was further enacted, that, if any king of Wessex should dispense with this law, he should be, *ipso facto*, deprived of his right to the crown. But, after the dissolution of the heptarchy, this vindictive and singular ordinance was not observed, being thought by the nation, as well as by their princes, to favour of barbarism, and to have proceeded from anger, not reason. Yet the temper of a people, among whom such a law had any time been in force, cannot be supposed to have been easily reconcileable to the sovereignty of a woman. In the reign of Edward the Elder, his sister Elfleda governed the Mercians after the death of her husband, and is called their *queen* by some writers. But that title did not belong to her with any propriety: for Mercia was not then a separate kingdom, but a province of the crown of England; and Ethelred, husband to Elfleda, was styled *subregulus* Merciorum, which Selden affirms to be the same with *Ealdorman*, the Saxon word for an *Earl*. Certain it is that Elfleda held Mercia as a gift from King Alfred, not by right of succession, nor by election. And therefore no argument can be drawn from this instance to prove, that, before the settlement made on the empress Matilda, the custom of England admitted women to succeed to the crown. We can only discover from it, that the idea of an incapacity in women to govern was then wearing off; and that it was thought they might be trusted with the government of a province, which prepared the way for their advancement to sovereign power in later times.



P. 163. *Nor had the Normans any example of the sovereignty among them being vested in a woman, from the foundation of their dukedom in France, or in the kingdoms of Denmark and Norway, from whence they came, &c.*

This is undeniably true, as far back as we have any authentick account of those kingdoms. Indeed, in the fabulous parts of their history, mention is made of one Heta, a *heroine*, who, about the year of our Lord 326, commanded an army of *Amazons*, and, by her prowess, was raised to the throne of Denmark; but even she is said to have been *deposed* by her subjects *on account of her sex*, and because she refused to marry, and give them *a king*; which, though the whole story be a fiction, sufficiently shews the opinion of the writer upon the national custom and temper of the people.

P. 165. *In order to get over this difficulty, Stephen prevailed upon Hugh Bigot, earl of Norfolk, to swear before the archbishop of Canterbury, that Henry had, in his presence, released his subjects from those oaths.*

I have taken the account I give of this oath from Gervase of Canterbury, who does not mention the name of the nobleman; but that is supplied by Henry of Huntington, Hoveden, and Diceto. Those authors indeed go further, and tell us, that Hugh Bigot swore, Henry had *disinherited his daughter, and bequeathed his kingdom to Stephen*. But we have an undoubted assurance, that Stephen himself did not pretend to any such bequest: for he makes no mention of it, in the preamble to his charter, among the titles he had to the crown; which are there set forth in full form, viz. his election by the clergy and people, his consecration by the archbishop of Canterbury, and the confirmation of his right by the pope. He most certainly would have added his *nomination by Henry*, if there had been a colour for it. I think it therefore much more probable, that Hugh Bigot's oath was only such as Gervase relates. And this is confirmed by the anonymous contemporary author of the history of that prince, entitled, *Gesta Stephani regis*. Partial as that writer was to him, he would not say more to help out his title, than what is mentioned by Gervase. His words are these, speaking of Henry: "Utque patenter agnosceremus, quod ei in vitâ, certâ de causâ, complacuit, post mortem ut fixum foret displicuisse, supremo eum agitante mortis periculo, cum et plurimi astant, et veram suorum erratum confessionem audirent, de jurejurando violenter baronibus suis injuncto apertissimè pœnituit." We may then take it for granted, that the testimony given by Hugh Bigot extended no further; and even this did not, I think, deserve any credit. For there is

See Gervase, subann. 1135. p. 1340. Huntington, f. 224. l. viii. Hoveden, 4. 277. par. 1. Diceto Abb. Chron. p. 505.

See Gest. Steph. Reg. p. 929.

no



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See Gemitic.  
c. 24.

no evidence in all our history of the least *violence* used in that affair by King Henry: and the contrary testimony of William of Malmſbury, that he did, on his death-bed, *confirm* the ſucceſſion of his daughter and grandſon to all his dominions, is of great weight. Probability too is entirely on that ſide. It cannot be conceived, that ſo prudent a prince ſhould have ſo weakly defeated a ſettlement, he had taken ſuch pains to ſecure. Whatever quarrel he had with his ſon-in-law, he had none with his daughter, nor with prince Henry, her ſon. Gemiticenſis indeed ſays, that Matilda was a little out of humour, and diſpleaſed with her father, *aliquantulum commota*, becauſe he would not, at her requeſt, pardon one of his barons, whom he ſuſpected of plotting againſt him, in confederacy with her huſband; and that, on this account, ſhe left Normandy, and went into Anjou, juſt before his laſt illneſs. But this (admitting the truth of it) could not have incenſed him ſo much, as to make him diſinherit both her and his grandſon.

P. 169. *This he not only ratified by an extraordinary oath, which he took at his coronation; and by a general charter, confirming that of King Henry the Firſt and the laws of Edward the Confefſor, but, ſome time afterwards, by another, given at Oxford, in which all the particulars of his oath were ſet down.*

Henry of Huntington, whoſe words are copied by Hoveden, writes thus: “Inde porrexit rex Stephanus apud Oxinforde, ubi recordatus eſt  
“et confirmavit pacta, quæ Deo et populo et ſanctæ eccleſiæ conceſſerat  
“in die coronationis ſuæ, quæ ſunt hæc: Primo vovit, quod, deſunctis  
“epiſcopis, nunquam retineret eccleſias in manu ſuâ, ſed ſtatim electioni  
“canonicæ conſentiens epiſcopis eas inveſtiret. Secundo vovit, quod  
“nullius clerici vel laici ſylvas in manu ſuâ retineret, ſicut rex Henricus  
“fecerat, qui ſingulis annis implacitaverat eos, ſi vel venationem cepiſſent  
“in ſylvis propriis, vel ſi eas ad neceſſitates ſuas extirparent vel diminu-  
“erent. Tertio vovit, quod Danegeldum (id eſt) duos ſolidos ad hidam,  
“quos anteceſſores ſui accipere ſolebant ſingulis annis, in æternum con-  
“donaret.” The two firſt articles here ſet down, are not as they ſtand in the charter of Stephen, but are only a comment upon them, and not very accurate, as will appear by comparing them with the words of the charter. And there is not, in the charter, the leaſt mention made of the third article relating to Danegeld. Nor had that tax been fixed by Stephen’s anceſtors, as the hiſtorian ſuppoſes, at two ſhillings for a hide of land, or paid every year, but differently aſſeſſed, and occaſionally levied, upon ſome alarm of an enemy’s invading the kingdom. (See Madox’s Hiſt. of the Exchequer.)

The



The clause in Stephen's charter, relating to forests, requires some observation: "Forestas, quas Willielmus rex, avus meus, et Willielmus secundus, avunculus meus, instituerunt et tenuerunt, mihi reservo. Cæteras omnes, quas Henricus rex superaddidit, ecclesiis et regno quietas reddo et concedo." By this it appears, that Henry the First had made some additions to the forests of the crown. And there is a clause to the same effect in the charta de forestis, obtained from King John. "In primis, omnes forestæ, quas rex Henricus, *avus noster*, (N. B. *avus* here means great-grandfather) "afforestavit, videantur per probos et legales homines; et si boscum aliquem alium quam suum dominicum afforestaverit ad damnum illius, cujus boscus fuerit, statim deafforestetur."

From the words of this clause we find, that king Henry the First had enlarged his forests two ways, by taking into them some woods of his own royal demesne, and by *afforesting* some of those of the gentry or clergy that bordered upon them. The first he might lawfully do, but the other was iniquitous, and contrary to the charter he had given himself. Yet it is probable, that he did not intend to encroach on his subjects, but was deceived by false accounts of the bounds of his forests, from the officers appointed over them; in consequence of which he often prosecuted the owners of woods supposed to lie within the precincts of them, if they presumed either to hunt in them, or cut them down. And in this sense I understand Henry of Huntington's words; *Sicut rex Henricus fecerat, qui singulis annis implacitaverat eos, si vel venationem cepissent in sylvis propriis, vel si eas ad necessitates suas extirparent, vel diminuerint.* It cannot be supposed that he claimed all the woods in the kingdom, or the sole right of hunting, as Ordericus Vitalis pretends. (See Ord. Vital. l. xi. p. 823.) Had he done so, it would have been certainly demanded of Stephen, and afterwards of king John, not only to restore by their charters the woods belonging to their subjects, which had been injuriously added by him to his forests; but also to renounce the pretension he had set up to all the woods and game in the kingdom.

As for those who had really woods *within* the king's forests, it is declared by the third article of the Charta de forestis, that they were not to grub up, diminish, or waste them, without licence from him; though by the same article an amnesty is granted for all faults of that kind, from the first year of Henry I. to the second of king John. I therefore suppose, that the words of Henry of Huntington, mentioned above, are not to be understood as relating to these, but only to the borderers; though they might seem to belong to both.



P. 180. Which grant Stephen now confirmed, and added to it Carlisle; &c.

See Camden,  
Cumberland.  
V. Chron. Sax.  
p. 72. sub ann.  
828.

P. 115. sub  
ann. 945.  
P. 188. sub  
ann. 496.

See Camden,  
Cumberland,  
p. 787.

See Baronage,  
p. 36.  
Earl of Chester.

Dugdale's  
Baron. p. 37.

See Camden,  
p. 779.  
Cumbria

As Carlisle was a royal city and the chief town of Cumberland, it may be thought that the grant of it included the county; but of this I find no clear proof. This province had long been inhabited by a remnant of the Britons, who, like the Welch, their countrymen, called themselves Cumri, or Kumbri, and maintained themselves there against the Scots, the Picts, and the Saxons. Yet it seems that they were subdued by the latter under Egbert; but they afterwards recovered their liberty, and were governed by princes of their own, to whom they gave the title of Kings, till the year 945, when Edmond, the brother of Athelstan, wasted their land, and granted it to Malcolm king of Scotland, *ea conditione* (says the Saxon Chronicle) *ut sibi esset commilito tum mari, tum terrâ*. Matthew of Westminster says, "*Cumbriam totam cunctis opibus spoliavit, ac duobus filiis Dummaili, ejusdem provincie regis, oculorum luce privatis, regnum illud Malcolmo, Scotorum regi, de se tenendum concessit, ut aquilonares Angliæ patres, terrâ marique, ab hostium adventantiem incurfione tueretur.*" "Whereupon (says Mr. Camden) the eldest sons of the kings of Scotland were for awhile, under the English Saxons, and Danes both, called the Præfects, or Deputy-rulers, of Cumberland." But, for some time before the conquest, it seems to have been under no regular government either of the English or Scotch. William the Conqueror gave it to Ranulph de Meschines; and Dugdale mentions a record, which styles him Earl of Cumberland. He began to rebuild Carlisle, which the Danes had destroyed, and is called, by Matthew of Westminster, Earl of Carlisle. But afterwards William took that city to himself, and also retained in his own hands the earldom of Cumberland; instead of which he gave the earldom of Chester to Ranulph de Meschines, who agreed to the exchange on condition, that those he had enfeoffed with lands in Cumberland should hold them in chief of the king. William Rufus completed the rebuilding of Carlisle, and it was raised by Henry the First to an episcopal dignity; but it does not appear, that the kings or princes of Scotland laid any claim to that city, or to the earldom, from the reign of William the First till that of Stephen. Richard and John of Hexham say, that Stephen gave Doncaster also to Henry, prince of Scotland. But Henry of Huntington names only Carlisle. And it does not appear, that either the king or prince of Scotland had any pretension to Doncaster.



caster. It was no part of earl Waltheoff's inheritance, nor of his wife's, as far as I can discover. It had never been held by any other Scotch king, nor was it conquered by David during this war; for he advanced no farther than to Durham. I have therefore followed Henry of Huntington, an author who lived in these times, rather than the two above-mentioned historians, with regard to this point.

P. 181. *This alarm of a storm gathering against him in Scotland brought back that prince, with no small anxiety and disturbance of mind, &c.*

There is another reason for Stephen's return assigned by Ordericus Vitalis. According to him a plot was formed, in the king's absence, by many of the English, strictly so called, to massacre all the Normans in England, upon a certain appointed day, as the Danes had been formerly massacred; and to deliver the kingdom to David, king of Scotland, who (as I before have observed) was nearer, in a lineal course of succession, to the Saxon royal family, than Stephen's queen, or the empress. The same historian relates, that it was discovered, by some of the accomplices, to the bishop of Ely, and by him to the rest of the nobles; upon which (as he tells us) many of the conspirators were convicted, and punished by different kinds of death; others, concerned in it, fled out of the realm, *leaving their honors and riches behind*; but the most powerful took up arms, and entered into confederacy with the Scotch or the Welsh. From these words it is plain, if any regard is to be paid to this passage, that some of the English had *wealth*, and *honors*, and *power* at this time. But though Ordericus Vitalis was a contemporary writer, and of good credit in general; yet, as no other ancient author mentions this plot, I think the truth of it is much to be questioned; especially as that author is not always so accurate in the account he gives of transactions in England, as in relating those that happened in France or Normandy, where he resided. It does not appear, even from the story he tells, that the king of Scotland himself was privy to this design. Nor does it seem at all probable, that without any encouragement given by him, a general massacre of the Normans in England should be then designed by the English, when, by intermarriages between the two nations continually made, even from the accession of William the Conqueror, their blood was so mixed, and so many families in all parts of England were the offspring of both. The city of London, where the greatest strength of the English then lay, was well-affected to Stephen, and continued to be so till his death. Upon the whole therefore I conjecture,

Ord. Vital.  
l. xiii. p. 912.



that if any of them were executed for a conspiracy, while the king was abroad, as Ordericus Vitalis relates, it was not for a general one against all the Normans, but for a more confined one, of private resentment and revenge against some of those, to whom he had confided the administration of government during his absence, particularly in the Northern and Western parts of the kingdom, where the conspirators might be favoured by the Scotch and the Welsh.

P. 188. *But Stephen suspecting him of holding a treasonable correspondence with David, had, at his return out of Scotland, arrested him in his own court, and, without any proof of his guilt or form of a trial, compelled him to surrender his castle of Bamburg.*

That these arbitrary imprisonments, without process of law, were against the custom of England, even in those days; and that in this respect Magna Charta did no more than confirm the ancient law, will appear from the following passage in Ethelred, abbot of Rivaux, a contemporary historian: "Conjunxerat se ei (regi Scotiæ) ejusque interfuit aciei Eustacius filius Johannis, de magnis proceribus Angliæ, regi quondam Henrico familiarissimus, vir summæ prudentiæ, et in secularibus negotiis magni consilii, qui a rege Anglorum ideo recesserat, quod ab eo in curiâ *contra patrium morem* captus, castra, quæ ei rex Henricus commiserat, reddere compulsus est: ob quam causam offensus, ut illatam sibi ulcisceretur injuriam, ad hostes ejus sese contulerat." According to other writers, instead of *castra quæ ei rex Henricus commiserat*, it should have been *castrum, quod, &c.* namely, the castle of Bamburg: but what I cite this passage for is to prove, that his imprisonment was *contra patrium morem*, and therefore considered as an offence and injury done to him, which even dissolved his allegiance.

P. 212. *Swearing to the first, that he should remain without food, till his nephew, the bishop of Ely, surrendered the castle, &c.*

William of Malmesbury, and Gervase of Canterbury, say, that the bishop of Salisbury, having no other means to conquer the obstinacy of the bishop of Ely, and save his son's life, refused to take any nourishment for three days together, by which he at last obliged his nephew to give up the castle: but the other contemporary authors affirm, with much more probability, that he did not inflict this abstinence on himself by a voluntary act, but was compelled to it by Stephen, who also took the same method with the bishop of Lincoln.

P. 222.



P. 222. *A secret application was therefore made to her by the earl of Gloucester and Matilda, to receive them into that castle, &c.*

The Norman chronicle says, they were invited by her husband; but as none of the other contemporary historians make any mention of him in this business, and he appears to have lived in peace and friendship with Stephen for some time afterwards, I rather suppose, that he was absent, and had no participation of the intrigue.

P. 247. *Upon which she immediately gave the alarm to her friends, and, with all possible silence and secrecy, drew them insensibly, by small parties, out of the city, before the conspirators there were ready to act; then, mounting on horseback, she retired, in a military manner, to Oxford; the nobles, who attended her, forming, with their followers, a strong body of cavalry, and marching together, in good order, till they got to a considerable distance from London.*

Some authors say, that Matilda and her friends made their escape in the utmost disorder, and, rather by a flight than retreat, having been informed of their danger but a moment before, when the bells of the city were ringing to call the people to arms, and the insurrection was already begun. But I have preferred the account given by William of Malm-  
bury, who says, that *insidiis præcognitis et vitatis, sensim, sine tumultu, quadam militari disciplina urbe cesserunt*. For, had their notice of the plot been so short, and their flight so disorderly, as the others pretend, it is not conceivable how those who were lodged in the city could all be permitted to go off unmolested, or how it could happen that no pursuit should have been made by the citizens. William of Malm-  
bury affirms, that *all* of Matilda's party escaped unhurt; and no other author makes mention of any of them having been killed, or taken prisoners.

V. Hist. Nov.  
l. ii. f. 106.

P. 283. *It happened well for him, that the action did not begin till after sun-set; so that darkness coming on assisted his flight.*

In my account of this action, I have, for the most part, followed the author of the Acts of King Stephen. Gervase of Canterbury differs, in some respects, from that author; particularly in this, that he says the king fled without facing the enemy; whereas the other tells us, that he drew all his forces out of the town, and did not fly, till the best part of them were broken and routed, which better agrees with his character. I have reconciled their accounts as far as I could; but where they are irreconcilable, I have adhered to the Acts of King Stephen, as the writer was nearest in time.



P. 293. *This Sultan left the government to his son Gelaeddin, whose dominions extended from Urquend, a city of Turquestan beyond the river Oxus, to Antioch in Syria; which he won from the Greek empire by the good conduct of Solyman, a prince of his blood, on whom he bestowed it, with part of the Lesser Asia, &c.*

Antioch had been conquered from the Greek empire by the Caliph Omar, in the sixteenth year of the Hegira; and remained in the hands of the Saracens till the year 357 of the same æra, when it was regained from them by the emperor Nicephorus Phocas. Solyman took it in the year of the Hegira 477. (See ANTHAKIA in Herbelot.)

P. 311. *Yet when he found, during his march over the lands of the empire, several proofs of hostile malice and treachery in the Greeks, &c.*

Monsieur Voltaire, in his late History of the Crusades, and another excellent writer of the same nation, have ascribed the mortality in the army of Conrade, only to their intemperance, and the effects of a foreign climate. (V. Voltaire Hist. des Croisades, sub ann. 1147. p. 78. & Abregé Chronologique de l'Histoire de France, tom. i. sub ann. 1148.) But the unanimous testimony of all the contemporary Latin historians, supported by Nicetas, a Greek, who was Secretary to Emanuel Comnenus, in his Life of that emperor, leaves us, I think, no room to doubt, that they were perfidiously destroyed by the Greeks. The silence of the last author, as to any violences committed by the Germans, which might have provoked such ill usage, disproves all that Cinnamus, another Greek writer, has said on that subject. In truth, the behaviour of Conrade and his army, was quite irreproachable, with regard to the Greeks; but the Greeks acted treacherously and basely by them; nor can I make any question of their having acted by the orders of Emanuel Comnenus. It appears by a letter from the king of France himself, that he likewise complained of *the fraud of that emperor*: “In quibus sanè partibus, tum *pro fraude imperatoris*, tum pro culpâ nostrorum, non pauca damna pertulimus, et graviter quidem in multis periculis vexati sumus. Non defuerunt quippe nobis assiduæ latronum insidiæ, graves viarum difficultates, quotidiana bella Turcorum, qui *permissione imperatoris* in terram suam militiam Christi persequi venerant, &c.” V. Epist. Suger. 39. apud Duchesne.

P. 326. *Yet the latter has left his readers as much in the dark, as all the other historians who lived in those days, with regard to the person she intrigued with.*

His



His words are these: "Spe frustratus, mutato studio, regis vias abominari, et ei præstruere patenter insidias, et in ejus læsionem armari cœpit, Uxorem enim ejus in id ipsum consentientem, quæ una erat de fatuis mulieribus, aut violenter, aut occultis machinationibus, ab eo rapere proposuit. Erat, ut præmisimus, *sicut et prius et postmodum manifestis edocuit indiciis*, mulier imprudens, et contra dignitatem regiam *legem negligens maritalem, thori conjugalis fidem oblita*: quod postquam regi compertum est, principis præveniens molimina, vitæ quoque et salutis consulens, de consilio magnatum suorum iter accelerans, urbe Antiochena cum suis clam egressus est." By these words, one would imagine, that he meant to accuse her of an amour with her uncle, as well as with others, before and after this time. But, in giving the character of the same prince of Antioch, he says, that he was scrupulously true to his wife, "conjugalis integritatis, postquam duxit uxorem, sollicitus custos et servator." And if that prince was not himself the gallant of Eleanor, it is most incredible that he should blast his own reputation, and risque his fortune and life, by taking her from her husband, to favour the criminal passion of another. As for the imputation this writer has thrown, in the passage above-cited, both on her former and subsequent conduct, I do not find it supported by any other evidence in any of the accounts we have of those times.

V. Wil. Tyri,  
l. xvi. c. 27.

Idem, l. xiv:  
c. 21.

P. 327. *This opinion is well warranted by the words of an historian, who lived in that age.*

The words that I refer to are these: "*Princeps fatis intelligens per responfionem regis petitiones suas vacuas fieri magna contra regem ferebuit iracundia, et ab illa hora non cessavit, in quantum potuit, in malum regis et dedecus machinare; in tantum quod Alienordis regina uxor sua suis malis exhortationibus regem voluit deserere, et ab illo, ad minus ad tempus, quasi quodam divortio separari.*" The Latin is very bad; but it is plain from the sense, that *uxor sua* means *uxor regis*, and *suis malis exhortationibus*, should be *ejus malis exhortationibus*. V. *Gesta Ludovici VII. regis filii Ludovici Grossi apud Duchesne.*

The author of the Life of Abbot Suger, published in 1721, ascribes the greatest part of this book to that Abbot, supposing that he wrote it from the Memoires of Odo de Deuil, and that after his decease it was finished by Odo. But he is certainly mistaken in both these opinions. For the Memoirs and this History differ in many particulars, of which I will mention one instance. The Memoirs say, that, after the defeat on the

Histoire de  
Suger, tom. ii.  
diff. 3<sup>me</sup>.



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the mountain of Laodicea, another action ensued, in which the French beat the Turks, and cut to pieces a large body of them between two rivers. (V. Odo de Diogn. l. vii.) But the History says, they never met with the Turks, after the defeat abovementioned, till they came to Atalia. (V. Gest. Ludov. c. 14.) The use of certain barbarous words in this book, which likewise occur in the writings of Suger, is not a proof that he wrote it: as the same words are used by many others, who wrote in that age. But there are some in this book, particularly *parlamentum*, which seem to fix the date of it half a century later than Suger's death. (See Gest. Lodov. c. 3. 18.) I therefore agree with the learned and judicious Dupin, in not regarding this book as the work of that Abbot.

P. 331. *For, to suppose, that true miracles were really done by him, in confirmation of his having received revelations from God, which the event proved to be false, is such an absurdity, and such an impiety, as, one would think, superstition itself should reject.*

It is astonishing, that a protestant Divine, Dr. Fuller, in his History of the Holy wars, should say, that *God set his hand to St. Bernard's testimonial of the miracles which that father wrought!* (V. Fuller's History of the Holy wars, l. ii. c. 30.) The Jesuit Maimbourg had more judgment, and speaks very doubtfully about all these miracles; or, rather, in a way that shews he thought they deserved no credit. V. Maimbourg Hist. des Croisades, l. iii. p. 429, 430.) But yet it is certain, that few of the modern miracles, believed by the Church of Rome, are better attested. There is still extant a book, published by Sanson, archbishop of Rheims, which contains a journal of them, with testimonies and proofs. (V. Fleuri Hist. Ecclesiast. l. lxix. p. 1246.) They are mentioned by many contemporary authors, both German and French. (V. Odo de Diog. l. v. Goffredi Vit. S. Bernardi, c. 4.) And, lastly, Bernard himself appeals to them as proofs of the truth of his mission. In his apology to the Pope he writes thus: "If you ask me, what miracles I have done, to prove  
" the divine revelations which I had received, that is a point to which it  
" does not become me to answer. Modesty hinders me, and I ought to  
" be excused from it on that account. It lies on you, holy father, it lies  
" on you to answer for me, *according to what you have seen and heard.*"

Among the miracles said to be done by him, this is one. A lame child was brought to him in presence of the emperor: he made the sign of the cross, raised the child, and bid him walk, which he did very well. Then Bernard, turning to the emperor, said, "This was done for your  
" sake.



"sake, that you may know, that God is certainly with you, and that  
"your enterprize is agreeable to him."

P. 336. *And though, in the desperate state of Stephen's affairs after the battle of Lincoln, he, with all the other noblemen who served that prince, except William of Ipres, submitted to Matilda, and not only was confirmed by her in his earldom, but received additional favours, as appears by two charters granted to him that year, yet he soon left her, and returned to the party of the king, &c.*

These charters are cited by Dugdale in his Baronage, but he has misplaced them: for that dated from Oxford, which he gives first, refers to the other, dated from Westminster, in several places, by confirming grants made therein. That both were granted in the year 1141 appears very clearly. For Matilda was not at Westminster after the death of her father till a few days before Midsummer in that year; and before the end of that summer she was driven from thence by the conspiracy of the Londoners. This certainly fixes the time, when the first of these charters was given, to have been in that interval. And she promises in the other, that certain lords, who are called *her barons*, should be pledges for the engagements contracted therein, and names among others Gilbert earl of Pembroke, who, from the time of the siege of Winchester till a year after the death of the earl of Essex, was in the service of Stephen. This charter must therefore have been given at the time when she went to reside in Oxford castle after her flight from Westminster, and before she engaged in her unsuccessful attempt upon the bishop's castle at Winchester: for only during that interval could the earl of Pembroke be reckoned among *her barons*, as he, together with all the chief friends of King Stephen, had then submitted to her; but presently afterwards forsook her again, and came with the army raised by the queen to besiege her in Winchester. Probably she gave the earl of Essex this charter, which is more liberal than the other, in hopes of recovering the city of London by his assistance. Whether at this time he really meant to assist her is doubtful. Perhaps he only treated with her to amuse and deceive her, till the bishop of Winchester should be ready to act in concert with him against her. Certain it is, that soon afterwards he broke these engagements: for the anonymous author of the Acts of King Stephen names all the earls who attended her general summons at Winchester, and he is not among them: and William of Malmesbury says, that almost all the earls in England attended the bishop of Winchester's

summons

V. Gest.  
Stephen: Reg.  
ap. Duchesne  
Hist. Norm.  
p. 956.  
V. Malmsh.  
Hist. Norm.  
l. ii. f. 107. 2.  
lin. 30.



summons upon that occasion; which is a very strong presumption that he came to that siege, with the forces from London, under William of Ipres: for, as he was a person of such note in the party, mention would have been made of his absence, if he had not been there. Nor can one suppose he would afterwards have been trusted by Stephen in so high a degree, if he had not served him at that very critical juncture, when all his other friends returned to his service. It is remarkable, that, in the last of the charters granted to him, in the year 1141, by Matilda, her husband and son are joined with her as confirming the grants. But in the former no notice is taken of either of them; nor do I find the earl of Anjou once mentioned in any other publick act or monument of those times relating to England. His being named as a party in the abovementioned charter would induce one to think, that Matilda had then a design to acknowledge him as king of England, in right of his marriage. But, if it was so, that intention was soon laid aside.

P. 345. *Nevertheless he retained to himself the dominion of that dutchy, as he had held it in her absence; that is, without any dependence upon her.*

Gervase says, she went to live *sub tutela mariti sui*.

P. 351. *And though Celestine died soon afterwards, and he found dispositions more favourable to him in Lucius the Second; yet he could not obtain from that pontif a renewal of his brother's commission.*

It is said, by some authors, that the bishop of Winchester received a pall from Pope Lucius the Second, who proposed to raise his see into an archbishoprick, with seven suffragans under him. (V. Diceto Abbreviat. Chronic. sub ann. 1143. Matth. Paris. Annales Winton. Anglia sacra, pars I. p. 300.) But the silence of all the contemporary historians, and more particularly of Gervase of Canterbury, upon this matter, makes me much doubt the truth of it; especially as J. Hagustaldensis affirms, that Lucius refused to make the bishop his legate. The most ancient historian, by whom it is mentioned, is Radulphus de Diceto. Perhaps the bishop might have such a design in his thoughts, as his ambition was restless, and his temper very enterprising; but that in so short a pontificate, as that of Lucius the Second, which did not last a year, so great a change should be made in the English church, and made while a civil war was raging in the kingdom, is very improbable.

P. 355.



P. 355. *The other English bishops obeyed the king, and the laws of their country; for which they were put, by the authority of the Pope, under spiritual censures.*

Gervase of Canterbury tells us, that four of the English bishops were absolved some time afterwards by the archbishop, from the sentence they had incurred on this account: and, as we learn from the same author, that all had been summoned to the council by the pope, all, I presume, were punished for not going thither; but with some difference in the censures and in the time they remained under them, according as they had shewn more or less inclination to go; unless any of them could plead sickness, or some necessary impediment.

Vid. Gervase  
Chron. col.  
1365.

P. 358. *It does not appear that the archbishop of Canterbury obtained at this time the legatine dignity.*

The being made the Pope's legate was in reality, though not in the sense of those times, a diminution of the dignity of an archbishop of Canterbury; but it was a greater diminution of it to be subjected to the exercise of the legatine power in the hands of a suffragan bishop: which will sufficiently account for the desire of Theobald to get it restored to his see. When his predecessor obtained it, he probably thought it an addition to his power; and so it was, if he found that the independency of his see could be no longer maintained against the pretended supremacy of the bishop of Rome.

Ibid. *But I do not find Theobald styled the Pope's legate till the year 1151.*

The author of the *Antiquitates Ecclesiæ Britannicæ*, and after him Mr. Selden, in his dissertation on *Fleta*, and some later writers, have said, that archbishop Theobald was honored with the title of *legatus natus*. But I find no mention of it in the contemporary historians. Gervase of Canterbury was too well informed of the affairs of that see, and too fond of all that he supposed did honor to it, especially under the government of Archbishop Theobald, to have omitted this in his Chronicle, and in the Life of that prelate, had it been true. Mr. Selden, who says, that this title was given him by Innocent the Second, must be mistaken; as we certainly know, that the bishop of Winchester was legate in England till the death of that pope. Some other writers have said, that Theobald gained the legatine dignity from Celestine the Second; but this, I believe, is likewise an error. For, had that commission been held by him when Celestine died, Lucius would hardly have sent into this kingdom a car-



dinal legate, as we find that he did; or, at least, on the recal of that legate, Theobald would have been styled, by Gervase of Canterbury, and Henry of Huntington, *apostolicæ sedis legatus*; but they do not give him that title till the year 1151.

P. 362. *But, before he did this, he required him to take an oath, never to resume, from him, or his heirs, any part of the three counties, which he had obtained possession of, during the troubles in England.*

In this I have followed William of Newbury. Roger de Hoveden, in giving an account of the oath exacted by David, expresses it thus:

V. Hoveden,  
sub ann. 1148.  
lin. 50.

“ Factus est miles ab eodem rege David in civitate Carleoli, prius dato  
“ sacramento, quod, si ipse rex Angliæ fieret, redderet ei Novum Castel-  
“ lum, et totam Northumbriam, et permetteret illum, et hæredes suos, in  
“ pace, sine calumnia, in perpetuum possidere totam terram, quæ est à  
“ fluvio Tweede ad fluvium Tine.” But David, according to William

of Newbury, was then in possession of all the country belonging to Eng-  
land, as far as the river Tees. “ Aquilonaris vero regio, quæ in potesta-

“ tem domini regis Scotorum usque ad fluvium *Tesam* ceperat, per ejus-  
“ dem regis industriam in pace degebat.” Yet notwithstanding this dif-

ference in marking the bounds, I presume that they both meant the three  
Northern counties, which, William of Newbury afterwards informs us,

V. Neubrig.  
l. ii. c. 4.

were yielded back to Henry in the year 1157. “ Regi quoque Scotorum,  
“ qui Aquilonares Angliæ regiones, scilicet Northumbriam, Cumbriam,  
“ Westmorilandiam, nomine Matildis dictæ Imperatricis, & hæredis ejus,  
“ olim à David Scotorum rege adquisitas, tanquam jus proprium possidebat,  
“ mandare curavit, regem Angliæ tantâ regni sui parte non debere frau-  
“ dari, nec posse patienter mutilari: justum esse reddi quod suo fuisset  
“ nomine adquisitum. Ille vero prudenter considerans regem Angliæ  
“ in hac parte cum potentia virium merito causæ præstare, quamvis pos-  
“ set obtendere juramentum, quod avo suo David præstitisse *dicebatur*,  
“ cum ab eo cingulum acciperet militare, prænominatos fines repetenti  
“ cum integritate restituit, &c.”

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mony of Roger de Hoveden cannot reasonably be rejected, especially as the matter is probable in itself. For though David had possessed himself of the abovementioned counties in the name of Matilda, and of her son, he certainly did not mean to give up the pretensions his own son had to Northumberland, if not to Carlisle; and we find, he disposed of all the three counties at his death, as having an absolute property in them, *tanquam jus proprium*, (to use the expression of William of Newbury) which he would hardly have done, without having made some agreement with Henry about them. I therefore believe, that he took this opportunity to obtain them from that prince, who wanted his assistance; and to obtain them, not as feudatory, but independent dominions.

P. 362, 363. *I presume, that he was not to hold this acquisition as a fief under David, who had no title to it, but under Henry Plantagenet as king of England.*

J. Hagustaldensis says, he did homage to David: but this must be a mistake; for Lancaster could not possibly be claimed by that king as a fief of his crown, having never belonged to it, either by treaty or grant from any king of England. It is not mentioned among the territories restored to Henry the Second; nor is there any notice taken of its having been then retained by the king of Scotland, or ceded to him by England. Henry, no doubt, would have claimed and recovered it, with the three Northern counties, if it had been in the possession of that king.

P. 375. *His father directed, by a clause in his will, that, if ever Henry should be fully possessed of his mother's inheritance, that is, of England and Normandy, he then should give up all his paternal dominions, namely the earldoms of Anjou, Touraine, and Maine, to his second brother.*

This fact is questioned by Mr. Carte, on the authority of an ancient historian, the monk of Moirmoutier, who relates, "That the earl of Anjou left orders at his death, forbidding Henry his son to introduce the customs of England or Normandy into Anjou;" from whence Carte infers, that he intended to leave that prince sole heir to all those dominions. But the inference is not good: for, as he certainly left him Anjou till he should gain possession of England, he might think it proper to restrain him from any alteration of the laws of that province while it was under his dominion, and yet mean to give that and his two other

X x x 2

earldoms



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earldoms to Geoffry, when the abovementioned contingency should come to pass. Certainly, neither this passage, nor the silence of other writers upon this point, can be enough to invalidate the positive testimony of William of Newbury, a contemporary historian, given with so many particulars, and supported by Brompton. Nor is it probable, that, without some pretence of this kind, Geoffry should have invaded his brother's dominions.

P. 378. *Suger was dead; and he had no other friend, either so honest or so wise, as to shew him all the folly of what he was doing.*

The author of the Life of Abbot Suger supposes, that, after Louis returned into France, that minister approved of his divorcing the queen, on account of her conduct while they were in the East. But I can discover no foundation for this supposition, which ill agrees with the prudence of Suger. The words of the letter he wrote to Louis, which are brought to confirm it, prove no such thing. “De regina, conjuge vestra, audemus vobis laudare (si tamen placet) quatenus rancorem animi vestri [si est] operiatis, donec (Deo volente) ad proprium reversus regnum, et super his et super aliis provideatis.” Advising him not to discover the rancour of his mind (*if he had any*) towards his queen, till, being returned into his own kingdom, he *might take proper measures on that and other affairs*, was by no means advising, *that he then should divorce her*. The true intention of it seems to have been, *to gain time*, and stop the king from pursuing, with a rash precipitation, what the first heat of his resentment suggested.

P. 390. *And had the resolution to publish an edict, which silenced the professor, and forbad the books, &c.*

J. Salisb. de  
nugis curia-  
lium.

The words of John of Salisbury, who was a contemporary writer, are these: “Tempore regis Stephani à regno jussæ sunt *leges Romanæ*, quas in Britanniam domus venerabilis patris Theobaldi, Britanniarum primatis, asciverat. Ne quis etiam libros retineret edicto regio prohibitum est; et Vacario nostro inhibitum silentium.” Mr. Selden, in his Dissertation on Fleta, understands the civil laws by *leges Romanæ*; and that the sense of them extended to these, is certain; but that they principally meant the canon laws, I think evident from the words of the same John of Salisbury immediately following: “Sed, *Deo faciente*, eo magis virtus legis invaluit quo eam amplius nitebatur *impietas* infirmare.” How could the opposing the imperial, or civil laws, unconnected with the canon laws, be called *a work of impiety*? Or, why is the *assistance of God*



brought in to the support of these laws, if the Pope and the Church had not been concerned in them? Indeed Mr. Selden himself, in three other tracts, has given his opinion for understanding this passage as relative to the canon laws. And Joannes Balæus explains them in the same sense. There is also a passage in Gervase of Canterbury, which may afford some light in this matter: Speaking of the disputes between the archbishop of Canterbury and the bishop of Winchester, about the legatine power, he goes on thus; “Oriuntur hinc inde discordiæ graves, lites, et appellationes antea inauditæ. Tunc leges & causidici in Angliam primo vocati sunt, quorum primus erat magister Vacarius. Hic in Oxenfordia legem docuit, et apud Romam magister Gratianus, & Alexander, qui & Rodlandus, in proximo papa futurus, canones compilavit.” By this it appears, that the occasion of bringing over these laws and professors from Italy, was the new and frequent disputes that arose between bishops, and in consequence of them, appeals made to the Pope. The jurisprudence of Rome, that is, the canons received, and authorized there, being to decide these appeals, the study of them was thought to be necessary here; and both parties desired to make their court to the pope, by the regard they paid to them; as nothing could more enlarge his authority, than the extending the use and influence of these laws. Yet it must be confessed, that Vacarius, who, as Gervase of Canterbury tells us, was the chief professor of them in England, did also teach the civil law. He was professor of both, *legum doctor*, and brought both together into this kingdom. For, at this time, they went hand in hand over Europe. The prohibition of Stephen included both; for there might well be a jealousy in the government, that too great a fondness, either for the civil or canon law, would be very prejudicial to the English constitution. It was afterwards found to be so; and therefore wisely opposed by the parliament. The only difficulty is, why the canon law should be said to be now brought into England. For, in a National synod, held here Anno Domini 670, the Codex Canonum vetus ecclesiæ Romanæ was received by the clergy. It also appears, by a statute of William the First, that with the advice and consent of his great council, he had reviewed and reformed the episcopal laws that were in use till his time in the realm of England. Some establishment therefore the canon law had undoubtedly gained in this country before the reign of King Stephen, even by the sanction of the whole legislature. But those more ancient canons were not so prejudicial to the rights of state, as these now introduced by Vacarius. The great compilation made by Ivo de Chartres, in the time of Henry the First, was strongly calculated to advance the domination

Janus Anglorum. Review of his book upon Tythes. And Notes upon Fortescue.

Actus pontif. Cantuar. de Theobaldo.

V. Dissert. in Fletam. Arthur Duck de usu & autoritate juris civilis. Chron. Norm. Robert de Monte, ann. 1148. V. Rot. Parl. 2 Rich. II. Bedæ Hist. eccles. l. iv. c. 5. Spelm. Conc. 293.

Selden's Notes on Eadmer, & Analect. Angl. Britan. L. Gul. I.



V. Selden's  
Review of his  
book of  
tythes.

nion of Rome, and all the extravagant pretensions of the clergy. It was probably this which was brought over and taught by Vacarius, with such other papal decrees, or canons of councils, as later popes had superadded to that body of laws. And these being formed on the principles of Gregory the Seventh, it was time for the civil power to resist their establishment. Besides; the question was now not only upon the *utility*, but the *authority* of those laws. For the court of Rome pretended to impose them upon all Christian states, *proprio jure*, and by a transcendent power in itself, derived from God, to which the laws of all nations were to submit. It was therefore most necessary now to assert the independency of the state, by refusing to admit them. Nor do I conceive that Stephen, by this prohibition, forbade the use of those canons which were already ingrafted into our constitution. He only expelled the new books, which had lately been brought into England by Vacarius.

The exact time when he published this edict we cannot be certain of; the year not being mentioned in any ancient writers who tell us the fact. Some modern authors have supposed, that it was done about the year 1148; but that is a mistake; for Vacarius did not begin to read lectures in Oxford till the year 1149. I have therefore ventured to place it in the year 1152, when Stephen had no longer any measures to keep, either with the pope, or the bishops, having been so insulted by both in the affair of his son's coronation. And as Gratian published his *Decretum* in the year 1151, that collection was probably sent over to Vacarius, and read by him here, which, from the nature of it, might well add to the alarm of the government, and determine it the more to this prohibition. Where we have only conjecture to guide us, probabilities must determine.

Matth Paris,  
p. 352.

It is observable, that when the Decretals of Gregory the Ninth, which he had *commanded to be read, and divulged throughout the whole world*, were brought into England, in the nineteenth year of the reign of Henry the Third, the king forbade them to be taught in the London schools:

“Mandatum est majori & vicecomitibus London, (says the close roll of this year) quod clamari faciant, & firmiter prohiberi, ne aliquis scholas regens de legibus in eadem civitate, de cætero ibidem leges doceat; & si aliquis fuerit hujusmodi scholas regens, ipsum sine dilatione capere faci-  
“ciant. Teste rege apud Basing. 11 Decem.” Lord Coke indeed says,

See Dissert.  
on Fleta.  
See Hist. of  
Convocat.  
p. 3, 4.

that this writ was issued out against the reading upon Magna charta, and Charta de foresta; but Selden and other learned men have demonstrated that he was mistaken.



P. 395. *And landed very happily, it is not said where, but, probably, at Wareham, on the sixth day of January, 1153.*

The Norman chronicle, as published in Duchesne, puts this event under the year 1151, as it does the death of the earl of Anjou under the year 1150. But Duchesne himself has observed, that the copy from which he printed that work is very full of anachronisms. Many indeed of the most approved writers, who lived in these times, differ in their dates even of very important facts. The disagreement between them may, sometimes, be reconciled, by observing, that some of them compute the beginning of the year from the incarnation, others from the nativity, others from the passion of our Lord Jesus Christ. And those who reckon not by the years of Christ, but by the years of a king's reign, (as several do) are not agreed in that computation; for, if a king came to the crown about the middle or end of a year, some reckon the interval between his coronation and the following year the first of his reign, beginning the second with the commencement of the next year: Others, on the contrary, take no account of those broken months, but date the reign from the beginning of the ensuing year. But there are some instances, where the discordance, in point of chronology, cannot be accounted for either way; but must be owing to inaccuracy and mistake in the writers, or in the copies which we have of their books. I have taken great pains, throughout this history, to fix the dates as exactly as possible; but do not think it necessary to trouble my readers, upon every occasion, with giving my reasons why I have preferred one authority to another.

P. 398. *The earl of Arundel, having assembled the English nobility, and principal officers, spoke to this effect: &c.*

Gervase of Canterbury, in his account of this event, makes the earl of Arundel propose an agreement with Henry to Stephen himself, without having first suggested it to the nobles, or being secure of their assent. And he supposes, that it arose from *accident*, not *design*; because the king's horse had fallen with him three times, which the earl thought a *bad omen*, and for that reason advised him to make a peace. One would also imagine, from his way of relating it, that Stephen came into a proposal so sudden, and so disadvantageous to himself and his family, without any reluctance, and chiefly on *that account*. But this is very improbable in every circumstance, especially as it appears by several proofs, that this prince was remarkably free from superstition. Henry of Huntington, another contemporary historian, gives a more rational account of this matter

Vid. Gerv.  
Chron. p.  
1373.

Huntington;  
f. 227.



matter in many particulars. According to him, it was entirely the act of the English nobility, who forced both Stephen and Henry into it against their will. His words are these: "Insurrexerunt autem proceres, immo proditores, Angliæ, *de concordia inter eos agentes, nihil tamen magis quam discordiam diligentes: sed bellum committere volebant, quia neutrum exaltare volebant, ne, altero subactò, alteriis liberè dominetur, sed semper alter alterum metuens regiam in eos potestatem exercere non posset.* Inducias igitur inter se rex, duxque constituerunt, *coacti nolentes, &c.*"

There are very few passages in any of our old English writers, which deserve more regard, for the good sense contained in them, and for the light which they throw upon a part of our history left very dark by all others. Yet it must be observed, that the earl of Arundel is not mentioned by Henry of Huntington in this affair; but as his narrative of it is short, that omission will prove nothing against what is said by other historians, of that nobleman's having been the first mover of it, and having greatly contributed to its success by the speech he made on this subject. I have therefore agreed so far with those writers; but in the occasion and purport of the speech, as well as in the effect that it had on Stephen, I have preferred the authority of Henry of Huntington, who seems to have been better informed, or to have judged more sagaciously of the real motives and springs of this revolution.

In composing the speech, I have followed the example of the most admired historians, Thucydides, Livy, Sallust, Tacitus, Guicciardino, Bentivoglio, Lord Bacon, and several others, both of ancient and modern times, who thought it proper to introduce some ornaments of this nature into their narratives; though some persons of good sense have objected against them, particularly Pere Daniel. They certainly give a dignity and spirit to history; for which reason, I think, they ought to be admitted, when they are only brought in upon great and weighty occasions, and when there is warrant sufficient to determine the matter, and general scope of them; as in this given here. I have sometimes abridged those that are delivered down to us in our ancient historians, if they appeared to be tedious; and some, which I thought impertinent, I have left out; but most of them are translated, without variation, from the contemporary writers.



# A P P E N D I X

TO THE

## F I R S T B O O K.

Nº I.

*Account of the Fleet which came over with the Conqueror, from an ancient MS. in the Museum.*

**W**ILLELMUS Dux Normannorum veniens in Angliam, ob adquirendum regnam jure sibi debitum, habuit a Wilhelmo dapifero, filio Osberni, sexaginta Naves. Ab Hugone postea Comite de Cestria totidem. Ab Hugone de Monfort quinquaginta Naves, et sexaginta Milites. A Romo vel Rumi elemosinario Fescanni, postea Episcopo Lincolnensi, unam Navem cum xx Militibus. A Nicholao Abbate de Sancto Audoeno xx Naves cum c Militibus. A Roberto Comite Augi sexaginta Naves. A Fulcone claudo xl Naves. A Geroldo dapifero totidem. A Will. Comite d'Evereux octoginta Naves. A Rogero de Montgomeri sexaginta Naves. A Rogero de Baumunt lx Naves. Ab Odone Episcopo de Baios c Naves. A Roberto de Morotein c & xx. A Waltero Giffardo xxx cum c Militibus. Extra has Naves, quæ computatæ simul m efficiunt, habuit Dux a quibusdam suis Homi- nibus, secundum possibilitatem unius cujusque, multas alias Naves. Matildis, postea Regina, ejusdem Ducis Uxor, ad honorem Ducis fecit effici Navem quæ vocabatur *Mora*, in qua ipse Dux vectus est. In prorâ ejusdem Navis fecit fieri eadem Matildis infantulum de auro, dextro indice monstrantem Angliam, et sinistra manu imprimentem cornu eburneum Ori. Pro quo facto Dux concessit eidem Matildi Comitatum Cantiaë.

N. B. There are some few errors in this manuscript with regard to the proper names, and the division of the sentences, which being very evident, I have ventured to correct them, and I have also printed the words without those abridgements which most of my readers would find troublesome. I presume that, by the words *pro quo facto Dux concessit eidem Matildi Comitatum Cantiaë*, the writer means, that he assigned her lands in Kent for her dower; the country being, we know, given by him to his brother, Odo bishop of Bayeux.

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Y y y

Nº II.



## Nº II.

*Transcribed from Wilkins and the Red Book of the Exchequer.*

*Carta Regis Willielmi Conquistoris de quibusdam statutis.*

**W**ILLIELMUS Rex Anglorum, Dux Normannorum, omnibus hominibus suis Francis & Anglis, Salutem.

*51. De Religione et Pace publica.*

Statuimus imprimis super omnia, unum Deum per totum regnum nostrum venerari, unam fidem Christi semper inviolatam custodiri, pacem, et securitatem, et concordiam, iudicium et iustitiam inter Anglos et Normannos, Francos et Britones Walliæ et Cornubiæ, Pictos et Scotos Albanæ, similiter inter Francos et Insulanos, Provincias et Patrias quæ pertinent ad coronam et dignitatem, defensionem et observationem, et honorem regni nostri, et inter omnes nobis subiectos per universam Monarchiam regni Britanniaë firmiter et inviolabiliter observari. Ita quod nullus alii forisfaciat in ullo super forisfacturam nostram plenam.

*N. B.* This law puts all the subjects of William the Conqueror on an equal footing.

*52. De fide et obsequio erga Regem.*

Statuimus etiam ut omnes liberi homines fœdere et sacramento affirment, quod intra et extra universum regnum Angliæ (quod olim vocabatur regnum Britanniaë) Willielmo Regi Domino suo fideles esse volunt, terras et honores illius omni fidelitate ubique servare cum eo, et contra inimicos et alienigenas defendere.

*N. B.* See what is said of this law in the latter part of the first book of the second volume, concerning the *militia* of the Normans.

*55. De Clientelari seu Feudorum jure et ingenuorum immunitate.*

Volumus etiam, ac firmiter præcipimus et concedimus, ut omnes liberi homines totius Monarchiaë regni nostri prædicti, habeant et teneant terras suas, et possessiones suas bene, et in pace, libere ab omni exactione injusta, et ab omni tallagio, ita quod nihil ab eis exigatur vel capiatur, nisi servitium suum liberum, quod de jure nobis facere debent, et facere tenentur; et prout statuum est eis, et illis a nobis datum et concessum jure hæreditario in perpetuum per commune consilium totius regni nostri prædicti.

*N. B.* See what is said of this statute p. 42. of this volume, and likewise in the latter part of the first book of the second volume, concerning the royal revenues. I will only add here, that it seems to refer to a former statute of the same king, which is now lost.

*56. De*



56. *De nocturnis custodiis.*

Statuimus etiam et firmiter præcipimus, ut omnes Civitates, et Burgi, et Castella, et Hundreda, et Wapentachia totius regni nostri prædicti singulis noctibus vigilantur, et custodiantur in girum, pro maleficis et inimicis, prout Vicecomites, et Aldermanni, et Præpositi, et cæteri Ballivi, et Ministri nostri melius per commune consilium ad utilitatem regni providebunt.

57. *De Mensuris et Ponderibus.*

Et quod habeant per universum regnum mensuras fidelissimas et signatas, et pondera fidelissima et signata, sicut boni Prædecessores statuerunt.

N. B. This useful statute was a confirmation of many others more ancient, and was confirmed in many succeeding reigns, but never, I believe, duly executed.

58. *De Clientum, seu Vassalorum præstationibus.*

Statuimus etiam et firmiter præcipimus, ut omnes Comites, et Barones, et Milites, et servientes, et universi liberi homines totius regni nostri prædicti habeant et teneant se semper bene in armis, et in equis, ut decet et oportet, et quod sint semper prompti et bene parati ad servitium suum integrum nobis explendum, et peragendum, cum semper opus adfuerit, secundum quod nobis debent de feodis et tenementis suis de jure facere, et sicut illis statuimus per commune consilium totius regni nostri prædicti, et illis dedimus et concessimus in feodo jure hæreditario. Hoc præceptum non sit violatum ullo modo super forisfacturam nostram plenam.

N. B. See what is said of this law in the latter part of the first book of the second volume, concerning the *militia* of the Normans.

59. *Ut jura regia illæsa servare pro viribus conentur subditi.*

Statuimus etiam et firmiter præcipimus, ut omnes liberi homines totius regni nostri prædicti sint fratres conjurati ad Monarchiam nostram et ad regnum nostrum pro viribus suis ac facultatibus contra inimicos pro posse suo defendendum, et viriliter servandum, et pacem et dignitatem Coronæ nostræ integram observandum, et ad judicium rectum, et justitiam constanter omnibus modis pro posse suo sine dolo et sine dilatione faciendam. Hoc decretum sancitum est in civitate London.

N. B. This was agreeable to the ancient Saxon laws, which bound all freemen to the defence of the king and kingdom. The last sentence shews, that these laws were made in different places and at different times.

60. *Ne venditio et emptio fiat nisi coram testibus et in civitatibus.*

Interdicimus etiam, ut nulla viva pecunia vendatur aut ematur, nisi intra civitates, et hoc ante tres fideles testes, nec aliquam rem vetitam sine fidejussore et warranto. Quod si aliter fecerit, solvat et persolvat, et postea forisfacturam.



## APPENDIX TO THE FIRST BOOK.

61. *De emporiis, et jure urbium pagorumque notæ melioris.*

Item nullum mercatum vel forum sit, nec fieri permittatur, nisi in civitatibus regni nostri, et in burgis, et muro vallatis, et in castellis, et in locis tutissimis, ubi consuetudines regni nostri, et jus nostrum commune et dignitates coronæ nostræ, quæ constitutæ sunt a bonis Prædecessoribus nostris deperiri non possint, nec defraudari, nec violari, sed omnia rite et in aperto, et per judicium et justitiam fieri debent. Et ideo castella, et burgi, et civitates sitæ sunt et fundatæ et ædificatæ, scilicet, ad tuitionem gentium et populorum regni, et ad defensionem regni, et idcirco observari debent cum omni libertate, et integritate, et ratione.

63. *Firmantur Leges Edwardi Regis.*

Hoc quoque præcipimus ut omnes habeant et teneant leges Edwardi Regis in omnibus rebus, adauctis his quas constituimus ad utilitatem Anglorum.

*N. B.* This law may be called *a new charter to the English*, confirming to them all their ancient laws, with such additions, or alterations only, as had been made in them by William to their advantage. It also extended to the Normans here the benefit of the English laws, so far as they were not altered by the new constitutions made by their prince with their concurrence. For the word *constituimus* implies a parliamentary act.

64. *De justitiæ publicæ fidejussoribus.*

Omnis homo qui voluerit se teneri pro libero, sit in plegio, ut plegius eum habeat ad justitiam si quid offenderit, et quisquam evaserit, talium videant plegii ut solvant quod calumniatum est, et purgent se, quia in evaso nullam fraudem noverint. Requiritur hundredus, et comitatus (sicut antecessores statuerunt) et qui juste venire debent et noluerint, summoneantur semel, et si secundo non venerint, accipiatur unus bos; et si tertio, alius bos; et si quarto, reddatur de rebus hujus hominis quod calumniatum est, quod dicitur *ceapgyld*, et insuper Regis forisfactura.

65. *De Servis et eorum manumissione.*

Et prohibemus ut nullus vendat hominem extra patriam: si qui vero velit servum suum liberum facere, tradat eum Vicecomiti per manum dextram in pleno comitatu, quietum illum clamare debet a jugo servitutis suæ per manumissionem, et ostendat ei biberas vias, et portas, et tradat illi libera arma, scilicet, lanceam, et gladium; deinde liber homo efficitur.

66. *De Servis.*

Item, si Servi permanferint sine calumnia per annum et diem in Civitatibus nostris vel in Burgis Muro vallatis vel in Castris nostris a die illa liberi efficiuntur, et liberi a jugo servitutis suæ sint in perpetuum.

*N. B.*



N. B. See what is said of these three laws in the latter part of the first book of the second volume.

*Carta Willielmi.*

**W**. Gratia Dei Rex Angliæ Comitibus, Vicecomitibus, et omnibus Francigenis et Anglis qui in Episcopatu Remegii Episcopi terras habent, salutem. Sciatis vos omnes et cæteri mei fideles, qui in Anglia manent, quod Episcopales Leges, quæ non bene, nec secundum sanctorum Canonum Præcepta, usque ad mea tempora in regno Anglorum fuerunt, communi concilio et consilio Archiepiscoporum meorum, et cæterorum Episcoporum et Abbatum, et omnium Principum Regni mei emendandas judicavi. Propterea mando et regia auctoritate præcipio, ut nullus Episcopus vel Archidiaconus de Legibus Episcopalibus amplius in Hundret placita teneant, nec causam quæ ad regimen animarum pertinet ad judicium secularium hominum adducant. Sed quicumque secundum Episcopales Leges de quacumque causa vel culpa interpellatus fuerit, ad locum, quem ad hoc Episcopus elegerit vel nominaverit, veniat, ibique de causa sua respondeat, et non secundum Hundret, sed secundum Canones et Episcopales Leges, rectum Deo et Episcopo suo faciat. Si vero aliquis per superbiam elatus ad justitiam Episcopalem venire noluerit, vocetur semel, secundo, et tertio; quod si nec sic ad emendationem venerit, excommunicetur, et si opus fuerit ad hoc vindicandum Fortitudo et Justitia Reges five Vicecomitis adhibeatur. Ille autem, qui vocatus ad Justitiam Episcopi venire noluerit, pro unaquaque vocatione Legem Episcopalem emendabit. Hoc etiam defendo et mea auctoritate interdico, ne ullus Vicecomes aut Præpositus aut Minister Regis nec aliquis Laicus homo alium hominem sine justitia Episcopi ad judicium adducat. Judicium vero in nullo loco portetur, nisi in Episcopali sede, aut in illo loco quem ad hoc Episcopus constituerit.

N. B. See what is said on this subject in p. 43 and 44. of this volume.

I will only add here, that it is unfortunate that we have not those emendations of the episcopal laws in use among the Saxons, which William the First here declares he had judged it proper to make with the advice and consent of his parliament; and which he sets forth as the foundation of this edict, or mandate. I can hardly suppose that his intention of making those emendations was never accomplished; it being much more probable, that we have lost the statute that made them, as well as many others, enacted during his reign.

Vid. Hist.  
Ingulph. Gale,  
Rer. Angl.  
Script. tom. i.  
p. 88.



N<sup>o</sup> III.

Vid. Hickes  
Dissertatio,  
p. 95.

P. 220, & seq.

**B**ESIDES these laws above recited, there are some of a penal nature, or concerning criminal matters, to which Ingulphus, abbot of Croyland, tells us, his Lord, King William the Conqueror, had given an authentick and perpetual sanction in his whole realm of England. He delivers them to us, as that prince had enacted them, in the French or Norman language; and calls them *the laws of the most just King Edward*: but Dr. Hickes observes truly, that some of them are quite new, and others altered more or less from the Saxon or Danish laws. I shall give them, with some other penal laws of this king, in the Appendix to my third volume, where I shall exhibit a short view of the criminal law of England, from the earliest times to the death of King Henry the Second. Here I shall only insert a few in that collection, which are of a civil nature, and which I shall give in the Latin translation of them published by Wilkins, without troubling my reader with the obsolete French original. The Sixth of this Code of laws, and the first I shall give here, is concerning the Replevin of animals.

“Is qui averium replegiaverit, aut equos, aut boves, aut vaccas, aut porcos, aut oves (quod Forþengen Anglice dicitur) is qui postulat dabit præposito; in toto, pro averio replegiato viii denarios, nec tamen habeat plus qui centum habet pro obolo, non dabit plusquam viii denarios, et pro porco iv denarios, et pro ove denarium unum, et pro alio unoquoque quod vivit iv denarios, nihilominus neque habebit nec dabit plusquam viii denarios, et dabit vadios, et inveniet plegios; sed, si aliquis venerit ad probationem intra annum et diem, ut averium petat, ad rectum habiturum in curiâ, eum [eo] de quo is averium replegiaverit.”

N. B. There is great obscurity both in the translation and original text of this and the following law, which I am not able to clear up. Probably it may arise from the faultiness of the copy in Ingulphus, though this is taken from the best that has been found. Mr. Tyrrel, in his translation of it into English, has omitted the part where the greatest difficulty lies. In general this law appears favourable to the subject, and calculated to prevent exactions from the people by the king's officers in the case of Replevins.

7. “Similiter de averio vaganti, et aliâ re inventâ. Ostendatur tribus partibus vicineti, ut testimonium habeat de inventione; si aliquis veniat ad probationem ad rem postulandam, det vadios, et inveniat plegios se, si alius



si quispiam postulaverit averium intra annum et diem, ad rectum exhibiturum in curiâ, id, quod invenerit."

18. "Liber homo, qui habuerit averia campestria xxx denariis æstimanda, dabit denarium S. Petri. Pro iv denariis, quos donaverit Dominus, quieti erunt bordarii ejus, et ejus *scabini*, et ejus servientes. Burgenfis, qui de propriis catallis habet id quod dimidia marca æstimandum est, dare debet denarium S. Petri. Qui in Danelega est liber homo, et habet averia campestria, quæ dimidia marca in argento æstimantur, debet dare denarium S. Petri. Et per denarium, quem donaverit Dominus, erunt quieti ii qui resident in suo Dominio."

N. B. The word *scabini* here is certainly a wrong translation, for Spelman, in his Glossary, says it means judges or assessors in the rural courts, persons too high to be ranked with *bordarii* and *servientes*. The word in the original is *bovers*, which I do not find in his Glossary: but Mr. Tyrrel translates it *villains*, and he says he was assisted by Dr. Hickes, who was skilled in the Saxon terms. Probably it was some species of under tenants on the demesne. The law is curious, as it shews in what proportions and from whom Peter-pence was then levied.

22. "De Relevio Comitum, quod ad regem pertinet, viii equi ephippiati, et frænis ornati, iv loricae, et iv galeæ, et iv scuta, et iv hastæ, et iv enses, alii cæteri iv veredi et palfredi, cum frænis et capestris."

N. B. This is agreeable to the laws of King Canute.

23. "De Relevio Baronis, iv equi cum sellis et frænis ornati, et loricae ii, et ii galeæ, et scuta ii, et ii hastæ, et ii enses, et alii cæteri ii unus veredus, et unus palfredus, cum fræno et capistro."

24. "De Relevio Vavassoris ad legitimum suum Dominum. Quietus esse debet per equum patris sui talem qualem habuerit tempore mortis suæ, et per lorica suam, et per galeam suam, et per scutum suum, et per hastam suam, et per ensen suum; et si adeo fuerit inermis, ut nec equum habuerit nec arma, per centum solidos."

N. B. All these reliefs in horses and arms were afterwards settled to be paid in money, and not in the same proportions as they stand here between earls, barons, and tenants by knight service, or vavassors. See the latter part of the first book of the second volume, and the notes thereto.

29. "De Relevio Villani. Melius animal quod habuerit, id (five equus sit, five bos, five vacca) donabit Domino suo pro relevio, et postea sint omnes villani in franco plegio."



## APPENDIX TO THE FIRST BOOK.

*N. B.* I put this law before some that are prior to it in the collection, and will follow here, not to separate those that are on the same subject. It must be observed, that the titles prefixed to all these laws in the Latin translation of Wilkins are not in the original French, and are many of them faulty. For instance, the title to this is *De Servorum Relevio*. But the word *villanus* in the original signifies not a slave but a farmer, as is evident from the law itself, which makes him liable to a relief; whereas the slaves had no property, all they had being their masters. It also declares, that *omnes villani* shall be under *frank pledge*, which shews that these villains were freemen. See more on this subject in the latter part of the first book of the second volume.

40. "Eorum qui fundum suum tenent ad censum, sit rectum relevium tantum quantum census annuus est."

*N. B.* This relates to socage tenure, and continued to be the rule for the payment of reliefs from lands so-held, till after the times that I write of. See Glanville, l. ix. p. 71. c. 4. See also the latter part of the first book of the second volume.

27. "Si quis vult distracionare conventionem de terra sua versus dominum suum, per pares suos eadem tenura quos vocavit in testimonium debet illud distracionare. Nam per extraneos non potest distracionare."

28. "Qui placitat in curia, cujuscunque curia sit, excepto ubi persona Regis est, et quis eum sistat super eo quod dixerit, rem quam nolit confiteri, si non potest distracionare per 11 intelligentes homines qui interfuerunt placito et videntes, quod non dixerit, recuperit juxta verbum suum."

*N. B.* This law is obscure.

33. "Eos qui colunt terram non debet quis molestare, præterquam de eorum debito censu. Nec licet Domino feudi amovere cultores de terra sua, quamdiu rectum servitium suum facere possint. Nativi qui discedunt à terra sua non debent cartam falsæ nativitatis quærere, ut non faciant suum rectum servitium quod spectat ad terram suam. Nativum, qui discedit à terra unde est natus et venit ad alteram, nullus retineat, nec eum, nec catalla ejus; sed redire cogatur, ut faciat servitium suum tale quod ad eum spectat: si Domini non faciunt alterius colonum venire ad terram suam, justitia id faciat."

*N. B.* For the better understanding of the sense of the law see what is said on the subject of socmen, husbandmen, and persons born in servitude, in the latter part of the first book of the second volume.

34. "Nemo Domino suo subtrahat rectum servitium suum, propter ullam remissionem quam ei antea fecerit."

42. "Non



42. "Non capiat quis *namium* aliquod in comitatu, nec extra, usque dum ter rectum petierit in hundredo, aut in comitatu; et si ad tertiam vicem rectum non potest habere, eat ad comitatum, et comitatus præfigat ei diem quartum, et si ipse defecerit de quibus ipse postulat, tunc licentiam accipiat ut possit *namium* capere pro suo homine et testimonio."

N. B. This is very obscure; but Dr. Hickes translates the word *namium* by *distress*, which will a little help to guess at the sense and purport of it.

43. "Nemo emat quantum iv denariis æstimatur, neque de re mortua, neque de viva, absque testimonio iv hominum aut de burgo aut de villa. Et si quis rem vendicat, et is non habeat testimonium, si nullum habeat warrantum, respondeat alteri catallum suum, et forisfacturam habeat qui habere debet; et si testimonium, habeat, ut jam diximus, advocet tribus vicibus, et vice quarta districtionet, aut rem reddat."

N. B. This law is taken from the 22d of King Canute. The restraint it lays upon buying any thing, except in the presence of four witnesses, must have been very inconvenient, though useful to prevent theft.

44. "Nobis rationi consonum non videtur, ut quis propriationem [Q. probationem, in the French *pruvance*] faciat supra testimonium quod cognoverit id quod interest, et quod nihil quis proprium faciat ante terminum vi mensium postquam averium furto sit ablatum."

46. "Nemo alium recipiet ultra tres noctes, nisi is eum illi commendaverit qui ejus fuerit amicus."

47. "Nemo hominem suum a se discedere patiatur antequam retatus fuerit."

49. "Quilibet etiam Dominus habeat servientem suum aut plegium suum, quem, si non retatus fuerit, habeat ad rectum in hundredo."

N. B. Concerning these laws of frank pledge, and restraint on the lodging of strangers, see what is said in the latter part of the first book of the second volume.



## Nº IV.

**A** N N O Incarnationis Dominicæ M c i. Henricus filius Willelmi Regis post obitum fratris sui Willelmi Dei gracia Rex Anglorum, omnibus fidelibus, Salutem. Sciatis me, Dei misericordia et communi consilio Baronum totius Regni Angliæ, ejusdem Regem coronatum esse. Et quia Regnum oppressum erat injustis exactionibus, Ego, Dei respectu et amore quem erga vos habeo, sanctam Dei Ecclesiam inprimis liberam facio; ita quod nec vendam, nec ad firmam ponam, nec mortuo Archiepiscopo, sive Episcopo, sive Abbate, aliquid accipiam de dominico Ecclesiæ, vel de hominibus ejus, donec successor in eam ingrediatur; et omnes malas consuetudines, quibus Regnum Angliæ injuste opprimebatur, inde aufero: Quas malas consuetudines ex parte hic pono. Si quis Baronum, Comitum meorum, sive aliorum qui de me tenent, mortuus fuerit, hæres suus non redimet terram suam, sicut faciebat tempore fratris mei, sed justa et legitima relevatione relevabit eam. Similiter et homines Baronum meorum justa et legitima relevatione relevabunt terras suas de Dominis suis. Et si quis Baronum, vel aliorum hominum meorum, filiam suam nuptum tradere voluerit, sive sororem, sive neptim, sive cognatam, mecum inde loquatur: sed neque ego aliquid de suo pro hac licentia accipiam, neque defendam ei, quin eam det, excepto si eam vellet jungere inimico meo. Et si, mortuo Barone sive alio homine meo, filia hæres remanserit, illam dabo consilio Baronum meorum cum terra sua: Et si, mortuo viro, uxor ejus remanserit, et sine liberis fuerit, dotem suam et maritacionem habebit, et eam non dabo marito, nisi secundum velle suum. Si vero uxor cum liberis remanserit, dotem quidem et maritacionem habebit dum corpus suum legitime servaverit, et eam non dabo nisi secundum velle suum: et terræ et liberorum custos erit, sive uxor, sive alius propinquarius qui justius esse debeat. Et præcipio quod Barones mei similiter se contineant erga filios et filias vel uxores hominum suorum. Monetagium commune, quod capiebatur per Civitates et Comitatus, quod non fuit tempore Regis Edvvardi hoc ne amodo fiat omnino defendo. Si quis captus fuerit, sive Monetarius, sive alius, cum falsa moneta, justitia recta inde fiat. Omnia placita, et omnia debita quæ fratri meo debebantur condono, exceptis rectis firmis meis, et exceptis illis quæ pacta erant pro aliorum hæreditatibus, vel pro eis rebus, quæ justius aliis contingebant. Et si quis hæreditate sua aliquid pepigerat, illud condono, et omnes relevationes quæ pro rectis hæreditatibus pactæ fuerant; et si quis Baronum vel hominum meorum infirmabitur, sicut ipse dabit vel dare



dare disponet pecuniam suam, ita datam esse concedo; quod si ipse præventus armis vel infirmitate pecuniam suam non dederit, vel dare disposuerit, uxor sua, sive liberi aut parentes, et legitimi homines ejus eam pro anima ejus dividant, sicut eis melius visum fuerit. Si quis forisfecerit, non dabit vadium in misericordia pecuniæ, sicut faciebat tempore patris mei vel fratris mei; sed secundum modum forisfacti ita emendabit, sicut emendasset retro a tempore patris mei in tempore aliorum Antecessorum meorum. Quod si perfidiæ vel sceleris convictus fuerit, sicut justum fuerit, sic emendet. Murdra etiam retro ab illo die, quo in Regem coronatus fui, omnia condono; et ea quæ amodo facta fuerint, juste emendentur secundum Lagam Regis Edvvardi. Forestas omni \* con-  
 sensu Baronum meorum in manu mea retinui, sicut pater meus eas habuit. Militibus qui per loricas terras suas defendunt terras dominicarum carucarum suarum quietas ab omnibus gildis et omni opere proprio dono meo concedo, ut sicut tam magno allevamine alleviati sunt, ita se equis et armis bene instruant ad servitium meum, et ad defensionem Regni mei. Pacem firmam in toto regno meo pono et teneri amodo præcipio. Lagam Edvvardi Regis vobis reddo, cum illis emendationibus quibus pater meus eam emendavit consilio Baronum suorum. Si quis aliquid de rebus meis, vel de rebus alicujus post obitum Willelmi Regis fratris mei cepit, totum cito sine emendatione reddatur; et si quis inde aliquid retinuerit, ille, super quem inventum fuerit, mihi graviter emendabit. Testibus M. Lundoniæ episcopo, et Gundulfo episcopo, et Willelmo electo episcopo, et Henrico comite, et Sim. comite, et Waltero Giffardo, et Roberto de Monfort, et Rogero Bigoto, et Henrico de Portu apud Londoniam quando fui coronatus.

N. B. See what is said of this charter in the first book of this volume, p. 99. and 100. and in the notes thereto. See also the latter part of the first book of the second volume and notes. The copy here given is taken from the most ancient we have, viz. the Textus Roffensis, which has been published by Mr. Hearne, and since by Dr. Blackstone in his book on the Great Charter.



## Nº V.

*Charta Regis Henrici primi, ubi Comitatus teneri debet, et ubi placita de divisis terrarum. E codice Dom. H. Spelman. Regum Veterum Statutorum Regni Angliæ.*

**H**ENRICUS Rex Anglorum Sampsoni Episcopo et Urfoni de Abetot, et omnibus Baronibus suis Francis et Anglicis de Wirecestria, Salutem.

Sciatis quod concedo et præcipio, ut amodo Comitatus mei et Hundredi in illis locis et eisdem terminis sedeant, sicut federunt in tempore Regis Edwardi, et non aliter. Ego enim, quando voluero, faciam ea satis summoneri propter mea dominica necessaria ad voluntatem meam. Et si amodo exurgat placitum de divisione terrarum, si est inter Barones meos dominicos, tractetur placitum in Curia mea. Et si est inter Vavassores duorum Dominorum, tractetur in Comitatu; et hoc Duello fiat, nisi in eis remanserit.

Et volo et præcipio, ut omnes de Comitatu eant ad Comitatus et Hundreda, sicut fecerint tempore Regis Edwardi: nec remaneant propter aliquam causam pacem meam, vel quietudinem, qui non sequuntur placita mea et judicia mea, sicut tunc temporis fecissent. Teste R. Episcopo Londoniæ, et R. Episcopo, et Ranulfo Cancell. et R. Comite de Mell. apud Rading.

*N. B.* From hence it appears, that in the reign of King Henry the First there were in Worcestershire some English barons holding of the crown, as well as Norman or French: and it is not to be supposed that they were only confined to that county. This statute is very important with regard to the jurisdictions of the king's court, and of the courts of the County and Hundreds. I shall say more of it in my third volume, where I shall treat of the institution of regular annual circuits of itinerant justices by King Henry the Second, and there also I shall consider the method of trials by duel, of which mention is made in this statute. There are many other laws ascribed to Henry the First, but, as I do not think the collection genuine, I have not inserted them here. See what is said on this subject in the latter part of the first book of the second volume, and the notes thereto.



## Nº VI.

*Charta Stephani Regis de Libertatibus.*

*From an ancient manuscript in the Cotton Library (Claudius D. ii. f. 75.)  
and Dr. Blackstone's Book on the Great Charter.*

**S**TEPHANUS Dei Gratia Rex Angliæ Justic. Vicecomitibus, Baronibus, et omnibus ministris et fidelibus suis, Francis et Anglicis, Salutem.

Sciatis me concessisse et præsentì Charta confirmasse omnibus Baronibus et hominibus meis de Anglia omnes libertates et bonas leges, quas Henricus Rex Angliæ, avunculus meus, eis dedit et concessit; et omnes bonas leges et bonas consuetudines eis concedo quas habuerunt tempore Regis Edwardi. Quare volo et firmiter præcipio, quod habeant et teneant omnes illas bonas leges et libertates de me et hæredibus meis, ipsi et hæredes sui, libere, quiete, et plenarie. Et prohibeo ne quis eis super hiis molestiam vel impedimentum vel diminutionem faciat, super forisfacturam meam. Teste Willielmo Martel apud London.

## Nº VII.

*Carta Stephani Regis, de Libertatibus Ecclesiæ & Regno concessis.*

*Ex Originali, inter Archivos Dec. & Capitul. Exon. reservato.*

**E**GO Stephanus Dei gratia, assensu Cleri et Populi in regem Anglorum electus, et a Domino Willielmo Cantuar. Archiepiscopo et sanctæ Romanæ Ecclesiæ legato consecratus, et ab Innocentio sanctæ Romanæ sedis pontifice confirmatus, respectu et amore Dei sanctam Ecclesiam liberam esse concedo, et debitam reverentiam illi confirmo. Nihil me in Ecclesia vel rebus ecclesiasticis simoniace acturum vel permissurum esse promitto. Ecclesiasticarum personarum et omnium Clericorum et rerum eorundem Justitiam et Potestatem, et distributionem bonorum Ecclesiasticorum in manu Episcoporum esse perhibeo et confirmo. Dignitates Ecclesiarum privilegiis earum confirmatas, et consuetudines earum antiquo tenore habitas, inviolatè manere statuo et concedo. Omnes Ecclesiarum possessiones et tenuras, quas die illa habuerunt quæ W. Rex Avus meus fuit vivus et mortuus, sine omni calumpniantium reclamazione eis liberas et absolutas esse concedo. Si quid vero de habitis vel possessis ante mortem ejusdem Regis, quibus modo careat, Ecclesia deinceps repetierit, indulgentiæ et dispensationi meæ vel restituendum vel  
discutiendum

*honorum  
Black*



discutiendum reservo. Quæcunque vero post mortem ipsius Regis, liberalitate Regum, vel largitione Principum, oblatione vel comparatione, vel qualibet transmutatione fidelium eis collata sunt, confirmo. Pacem et Justiciam me in omnibus facturum et pro posse meo conservaturum eis promitto. Forestas quas W. avus meus et W. avunculus meus instituerunt et habuerunt, mihi reservo. Ceteras omnes, quas Rex H. superaddidit, Ecclesiis et Regno quietas reddo et concedo. Siquis Episcopus vel Abbas vel alia Ecclesiastica Persona ante mortem suam rationabiliter sua distribuerit vel distribuenda statuerit, firmum manere concedo. Si vero morte præoccupatus fuerit, pro salute animæ ejus Ecclesiæ consilio eadem fiat distributio. Dum vero sedes propriis pastoribus vacuæ fuerint, ipsas et earum possessiones omnes in manu et custodia Clericorum vel proborum hominum ejusdem Ecclesiæ committam, donec Pastor canonice substituatur. Omnes exactiones et injusticias et mescheningas, sive per vicecomites vel per alios quoslibet male inductas, funditus extirpo. Bonas Leges et antiquas, et justas consuetudines in murdris, et placitis, et aliis causis observabo, et observari præcipio et constituo. Hæc omnia concedo et confirmo, salva regia et justa dignitate mea. Testibus W. Cantuar. Archiepiscopo, et Hug. Rothom. Archiepiscopo, et Henrico Winton Episcopo, et Rogero Sarum Episcopo, et A. Linc. Episcopo, et Nigell. Eliens. Episcopo, et Euardo Norvic. Episcopo, et Simone Wiggorn. Episcopo, et Bernar. Episcopo de *St. David*, et Audoen. Ebroic. Episcopo, et Ricar. Abrinc. Episcopo, et Rob. Heref. Episcopo, et Johan Royec. Episcopo, et Athelulfo Carlol. Episcopo, et Rogero Cancellario, et Henrico nepote Regis, et Rob. de fisc. et R. Comite Gloec. et Will. Comite de Warrena, et Rad. Comite Cestriæ, et Rob. Comite de Warewic, et Rob. de Ver. et Milone de Gloec. et Brient fil. Comitis, et Rob. de Oilli Conestabulariis, Will. Martel. et Hugone Bigot, et Humfred. de Bohun, et Tim. de Bellocamp dapiferis, et Will. de Albin. et Eudone Martel. Pincerna, et Rob. de Ferrariis, et Will. Peuerel de Nottingham, et Sim. de *Santliz.* et Will. de Alban, et Pagano fil. Johan. et Hamone de Sto Claro, et Gliberto de Laceio. Apud Oxenford anno ab incarnatione Domini M. C. XXXVI. sed Regni mei primo.

N. B. See what is said of these two charters, p. 169. and 170. of this volume. Dr. Blackstone has given a copy of the latter from Mr. Hearne (Not. ad Gul. Neubrigenf. 711.) who says he took it from an original which had been in his hands. I have compared them, and find some variations, but none that are material with regard to the sense, except that the last words of Hearne's end with the words—in communi concilio, instead of—sed regni mei primo.



N<sup>o</sup> VIII.

*Pope Innocent's bull for the confirming of Stephen's election to the kingdom of England. From Rich. Hagustald. inter Decem Scriptories, p. 313, 314.*

**I**NNOCENTIUS Episcopus, servus servorum Dei, carissimo in Christo filio Stephano illustri Anglorum Regi, Salutem et Apostolicam benedictionem. Rex regnum et Dominus dominantium, in cujus manu sunt omnium potestates et omnia jura regnorum, ex incomprehensibili supernæ providentiæ dispensatione, quando vult, mutat tempora et transfert regna. Sicut enim attestatur propheta, *Dominatur excelsus in regno hominum, et cui voluerit dat illud.* Quot commoditates, quanta jocunditatis tranquillitas, quantaque justitiæ censura in regno Angliæ et ducatu Normanniæ, regnante filio nostro gloriosæ memoriæ Henrico rege, vigerunt, eo humanis rebus exempto oculata fide perclaruit. Cum enim idem esset religiosorum virorum amator, pacis et justitiæ cultor, viduarum et orphanorum propitius consolator, et eorum qui impotentia defendere se non poterant pius defensor; ipso sublato de medio, prout accepimus, turbata est religio in regno Angliæ, et nullum mandatum pacis seu justitiæ in adjutorio regali vigeat, atque atrocitatem tantorum scelerum comitabatur impunitas. Ne autem diutius grassando in populum Dei debacchari posset dira feralitas, inclinata est ad preces religiosorum virorum divinæ miseratio pietatis, et tantis flagitiis potentur occurrens, (quemadmodum venerabilium fratrum nostrorum, Archiepiscoporum, Episcoporum earundem regionum, et amatorum sanctæ Romanæ ecclesiæ, gloriosi Francorum regis, et illustri viri Comitum Theobaldi scripta testantur, et illustrium virorum nobis indicavit assertio) communi voto et unanimi assensu tam procerum quam etiam populi, te in regem eligere et a præsulibus regni consecrari providit. Nos cognoscentes vota tantorum virorum in personam tuam, præeunte divina gratia, convenisse, pro spe etiam certa te beato Petro in ipsa consecrationis tuæ die obedientiam et reverentiam promississe, et quia de præfati regis prosapia prope posito gradu originem traxisse dinosceris, quod de te factum est gratum habentes, te in specialem beati Petri et sanctæ Romanæ ecclesiæ filium affectione paternâ recipimus, et in eadem honoris et familiaritatis prærogativa qua prædecessor tuus, egregiæ recordationis Henricus à nobis coronabatur, te propensius volumus retinere.

*N. B.* See what is said of this bull p. 171. to 174. of this volume.

I will add here, that it does not appear to me from the best accounts



## APPENDIX TO THE FIRST BOOK.

counts of those times, that the disorders which broke out in the kingdom of England on the death of Henry the First were of such a nature, that they could not have been easily restrained by the grand justiciary, if he had done his duty as regent and guardian of the kingdom in the absence of Matilda. Yet the first reason given by Innocent in this bull to justify Stephen's election, is the necessity of opposing and stopping those disorders. But the real motives, which inclined his Holiness to approve and confirm that election, were those afterwards mentioned, viz. the recommendations of the English prelates, of the king of France, of the earl of Blois, and the promises made by Stephen of *obedience and reverence to St. Peter*.

## Nº IX.

*Extract. e Literis G. Abb. Gloc. ad fil. Brierley. Cave Manuscr.  
Epist. Gilb. Fol. episc. London. in Bibliotheca Bodleiana.*

**N**O N diu est quod audisti Dominum Papam Innocentem convocasse Ecclesiam et Romæ conventum celebrem habuisse. Magno illi Conventui cum Domino et Patre nostro Domino Albate Cluniacensi interfui et ego Cluniacensium minimus. Ibi causa hæc in medium deducta est, et aliquandiu ventilata: stabatque ab Imperatrice Dominus Andegavensis Episcopus, qui cum causam ejus diligenti percurrisset oratione, contra ipsum, quasi cum voce præconia, in communi audientia declamatum est. Et quia Dominus Andegavensis duo inducebat præcipue, Jus scil. hereditarium et factum Imperatrici juramentum; contra hæc duo in hæc verba responsum est. Oportet in causis omnibus, quæ multiplici jure nituntur, hoc considerare præcipue, quid sit jus principale in causâ, quo causa ipsa principaliter innititur; quod vero secundarium sit, et ab ipso principali dependens. Sublato enim jure principali, necessario tollitur et secundarium. In hac igitur causâ principale est, quod Dominus Andegavensis de hereditate inducit; et ab hoc totum illud dependet, quod de juramento subjungitur: Imperatrici namque, sicut heredi, juramentum factum fuisse pronunciat. Totum igitur quod de juramento inducitur exinaniri necesse est, si de ipso hereditario jure non constiterit. Ipsum vero sic infringitur: Imperatricem, de qua loquitur, non de legitimo matrimonio ortam denunciamus. Deviauit a legitimo tramite Henricus Rex, et quam non licebat sibi junxit matrimonio, und istius sunt Natalitia propagata; quare illam Patri in heredem non debere



debere succedere et Sacra denunciant. Hoc in communi audientia multorum vociferatione declamatum est, et nihil omnino ab altera parte responsum.

N. B. This is printed without the abbreviations in the original, and some stops are added, to make it clearer. See what is said of it from p. 171. to 174. of this volume.

## Nº X.

*Charta Conventionum inter Regem Stephanum, et Henricum filium Matildæ Imperatricis, de successione Regni Angliæ.*

STEPHANUS Rex Angliæ Archiepiscopis, Episcopis, Abbatibus, Comitibus, Justiciariis, Vicecomitibus, Baronibus, et omnibus Fidelibus suis Angliæ, Salutem.

Rymeri Fœdera, tom. i.  
p. 13. &  
J. Brompton  
inter Decem  
Scriptores,  
p. 1037.

Sciatis quod ego Rex Stephanus Henricum Ducem Normanniæ post me successorem regni Angliæ et hæredem meum jure hæreditario constitui, et sic ei et hæredibus suis regnum Angliæ donavi et confirmavi.

Dux vero, propter hunc honorem, et donationem, et confirmationem sibi à me factam, homagium mihi et sacramento securitatem fecit; scilicet quod fidelis mihi erit, et vitam et honorem meum pro suo posse custodiet per conventiones inter nos prælocutas, quæ in hac Carta continentur. Ego etiam securitatem sacramento Duci feci, quod vitam et honorem ei pro posse meo custodiam, et sicut filium et hæredem meum in omnibus, in quibus potero, eum manutenebo, et custodiam contra omnes quos potero. Willielmus autem filius meus homagium et securitatem Duci Normanniæ fecit, et Dux ei concessit ad tenendum de se omnes terras, quas ego tenui antequam regnum Angliæ adeptus essem, sive in Anglia, sive in Normannia, sive in aliis locis; et quicquid cum filia Warrenniæ Comitis accepit, sive in Anglia, sive in Normannia, et quicquid ad honores illos pertinet; et de omnibus terris, villis, et burgis, et redditibus, quos Dux in dominio suo inde nunc habet, et nominatim de illis quæ pertinent ad honorem Comitis Warrenniæ, Willielmum filium meum et homines illius, qui de honore illo sunt, plenarie sayfiet, et nominatim de Castello de Belencumbre, et castro Mortui-maris; ita scilicet, quod Reginaldus de Warrennia, castrum de Belencumbre, et castrum Mortui-maris custodiet, si voluerit, et dabit inde Duci obsides: si vero noluerit, alii de ligeis hominibus Comitis Warrenniæ, quos Dux voluerit, similiter per salvos obsides et salvam custodiam eadem castra custodient.



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Alia vero Castra, quæ pertinent ad Comitem Moretoniæ, Dux ei reddet ad voluntatem meam, cum poterit, per salvam custodiam et per salvos obsides: Ita quod omnes obsides reddantur filio meo quiete, quando Dux Regnum Angliæ habebit.

Incrementum etiam quod ego Willielmo filio meo dedi, ipse Dux ei concessit, castra scilicet et villas de Norwico cum septingentis libratis terræ, ita quod redditus de Norwico infra illas septingentas libratas computetur; et totum Comitatum de Northfolk, præter illa quæ pertinent ad Ecclesias et Prælatos, et Abbates, et Comites, et nominatim præter tertium denarium, unde Hugo Bigotus est Comes, (salva et reservata in omnibus regali justitia.)

Item, ad roborandum gratiam meam et dilectionem, dedit ei Dux, et concessit omnia quæ Richerus de Aquila habebat de honore Pevenesseli. Et præter hæc castra et villas Pevenesseli et servitium Faramusi, præter castra et villas de Dovre, et quod ad honorem de Dovre pertinet, Ecclesiam de Fauresham cum pertinentiis suis Dux confirmavit, et alia aliis Ecclesiis a me data vel reddita consilio sanctæ Ecclesiæ et meo confirmabit.

Comites et Barones Ducis, qui homines mei nunquam fuerunt, pro honore, quem Domino suo feci, homagium et sacramentum mihi fecerunt, salvis conventionibus inter me et Ducem factis; cæteri vero qui antea homagium mihi fecerant, fidelitatem mihi fecerunt, sicut Domino.

Et si Dux a præmissis recederit, omnino a servitio ejus ipsi cessarent quousque errata corrigeret; filius meus etiam, secundum consilium sanctæ Ecclesiæ, se inde contineret, si Dux a prædictis recederet.

Comites etiam et Barones mei ligium homagium Duci fecerunt, salva mea fidelitate quamdiu vixero et regnum tenuero, simili lege, quod si ego a prædictis recederem, omnino a servitio meo cessarent quousque errata corrigerem.

Cives etiam civitatum, et homines castrorum, quæ in Dominio meo habeo, ex præcepto meo homagium et securitatem Duci fecerunt, salva fidelitate mea quamdiu vixero et regnum tenuero; illi autem, qui castrum Walingford custodiunt, homagium mihi fecerunt, et dederunt mihi obsides de fidelitate mihi servanda.

Ego vero de castris et murationibus meis securitatem talem Duci, consilio sanctæ Ecclesiæ, feci, ne Dux, me decedente, per hoc damnum aut impedimentum regni incurrat.

Etiam turris Londoniensis Richardo de Luceio, et mota Windesores consilio sanctæ Ecclesiæ ad custodiendum traditæ sunt: Richardus autem de Luceio juravit in manu Archiepiscopi, et in custodia filium suum obsidem dedit, quod post meum discessum castra prædicta Duci redderet.

Similiter



Similiter, consilio sanctæ Ecclesiæ, Rogerus de Luceio motam de Oxoneford, et Jordanus de Buselo firmitatem Lincolnæ custodiunt, et ligii homines Ducis sunt, et juraverunt, et obsides inde dederunt in manu Archiepiscopi, quod, si ego decederem, Duci munitiones sine impedimento redderent.

Episcopus Wintoniensis, in manu Archiepiscopi Cantuariensis, coram Episcopis affidavit, quod, si ego decederem, castrum Wintoniæ et munitionem Hamptoniæ Duci redderet.

Quod si aliquis eorum, quibus munitionum custodia commissa fuerat, moreretur, aut a custodia sibi deputata recederet, consilio sanctæ Ecclesiæ alius custos ibi statueretur, priusquam ille recederet.

Si vero aliquis de hiis, qui meas munitiones custodiunt, contumax vel rebellis extiterit, de castris scilicet, quæ ad coronam pertinent, communi consilio ego et Dux nos inde continebimus, quousque ad voluntatem utriusque nostrum cogatur satisfacere.

Archiepiscopi, Episcopi, atque Abbates de regno Angliæ, ex præcepto meo, fidelitatem sacramento Duci fecerunt.

Illi quoque, qui in regno Angliæ Episcopi deinceps fient, vel Abbates, idem facient.

Archiepiscopi vero et Episcopi, ab utraque parte, in manu ceperunt, quod, si quis nostrum a prædictis conventionibus recederet, tamdiu eum cum ecclesiastica justitia coercebunt, quousque errata corrigat, et ad prædictam pactionem observandam redeat.

Pater etiam Ducis, et ejus uxor, et fratres ipsius Ducis, et omnes sui, quos ad hoc applicare poterit, hæc affecurabunt.

In negotiis autem regni ego consilio Ducis operabor.

Ego vero in toto regno Angliæ, tam in parte Ducis quam in parte mea, justiciam exercebo regalem.

Testibus hiis omnibus :

Theobaldo Archiepiscopo.

Henrico Wintoniensi Episcopo.

Roberto Exoniensi Episcopo.

Roberto Bathoniensi Episcopo.

Golecino Salesburienfi Episcopo.

Roberto Lincolnienfi Episcopo.

Hilario Cicestrenfi Episcopo.

Willielmo Norwicenfi Episcopo.

Richardo London Episcopo.

Nigello Elyensi Episcopo.

Gyleberto Hardefordensi Episcopo.

Johanne Wygornensi Episcopo.

Waltero Cestrenfi Episcopo.

Waltero Roffensi Episcopo.

Galfrydo de S. Asaph Episcopo.

Roberto Priore Bermundsey.

Otun Milite Templi.

Willielmo Comite Cicestrenfi.

Roberto Comite Leycestrenfi.

Willielmo Comite Gloucestrenfi.

Raynoldo



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Raynoldo Comite Cornvallia.	Willielmo Martel.
Baldewyno de Donyngton.	Richardo de Humez.
Rogero Harfordia.	Reginaldo de Warrennia.
Hugone Bygote.	Manafe Bifet.
Patricio Salysberienfi.	Johanne de Port.
Willielmo de Alba Marla.	Richardo de Camavilla.
Alberico Comite.	Henrico de Effexe.
Richardo de Luceio.	Apud Westmonasterium.

The END of the FIRST VOLUME.



# I N D E X

TO THE

## FIRST VOLUME.

A.

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